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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,102	07/14/2003	Michael E. Davis	1000-1303	8600
7590	02/15/2005		EXAMINER	
Luis M. Ortiz P.O. Box 4484 Albuquerque, NM 87109			COCKS, JOSIAH C	
			ART UNIT	PAPER NUMBER
			3749	
DATE MAILED: 02/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/620,102	Applicant(s) DAVIS, MICHAEL E.	
	Examiner Josiah Cocks	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 12/07/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 12/07/2004 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has amended the claims to recite that the burner element is "adjustable." However, the specification as originally filed does not describe the burner element as adjustable nor do the Figures show what would constitute an adjustable burner element. Therefore, the limitation of an "adjustable burner element" is considered new matter and must be removed.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1-29 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims recite the limitation of an “adjustable burner element.” It is not clear what constitutes “adjustable.” For the purpose of an examination on the merits, an adjustable burner element regarded as reciting that the burner element is movable.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-18 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,901,697 to Oliver, Jr. et al. (“Oliver ‘697”) in view of U.S. Patent No. 6,006,743 to Shimek et al. (“Shimek”).

Oliver ‘697 discloses a portable artificial campfire device similar to that described in applicant’s claims 1-18 and 29. In particular, Oliver ‘697 discloses a burner element provided in a circular configuration and includes an entry port adapted for attachment to an adjustable gas valve and a surface having a plurality of orifices formed therein and dispersed throughout the surface of the burner element. This burner element is a separate element from the surrounding

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container (12) and is capable of being moved or adjusted within the container. Oliver '697 also discloses an adjustable valve (38) that controls flame height and intensity through the orifices (see col. 6, lines 66-67), is adaptable for placement into existing campground facilities including campfire rings, and is connected to a pressurized fuel source (32).

Oliver '697 possibly does not show that the plurality of orifices are of varying density.

Shimek teaches a portable burner in the same field of endeavor as Oliver '697. In Shimek, the burner includes different size jets and patterns, which are regarded as being of varying density (see Fig. 9).

Therefore, in regard to claims 1-18 and 28, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner of Oliver '697 to incorporate the orifices of varying density as taught by Shimek to desirably produce an orifice pattern that produces more efficient burning (see Shimek, col. 4, lines 52-57).

3. Claims 19-27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oliver '697 in view of Shimek as applied to the claims above, and further in view of U.S. Patent No. 3,027,888 to Fault et al. ("Fault") and admitted prior art.

Oliver '697 in view of Shimek teach all the limitations of claims 19-27 and 29 except that the burner element is tubular steel formed in a spiral.

Fault teaches a burner in the same field of endeavor as Oliver '697. In Fault, the burner element of the burner is formed as a spirally wound tube (44) (see col. 2, line 27).

The prior Office Action took OFFICIAL NOTICE as to the well-known use of steel for burner tubes. Applicant did not dispute this assertion. Accordingly, it is now considered admitted prior art that burner tubes may be made of steel.

Therefore, in regard to claims 19-27 and 29, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner element of Oliver '697 to be spiral shaped as taught by Fault as this shape gives a maximum heat output from a unit occupying a minimum of space (see Fault, col. 2, lines 49-53).

Response to Arguments

4. Applicant's arguments filed 12/07/2004 have been fully considered but they are not persuasive. Applicant argues that the primary reference of Oliver '697 teaches away from applicant's invention because this reference is typical of the prior art which shows permanent installations not easily adaptable for outdoor use. Also, aside from asserting that the new limitation that the burner element is "adjustable," applicant does not point out the limitations of applicant's claims that are not present in the prior art. As noted above, the examiner considers that each of applicant's limitations are present in the prior art references relied upon.

Applicant also argues on page 14 of the response that "*Oliver* and *Shimek* and *Fault* fail to teach every element of the claimed invention." Applicant appears to be arguing against the references individually. However, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The limitations that the examiner does not consider to be present in the Oliver

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'697 reference have been asserted to be present in Shimek, Fault, or admitted prior art. Further, the motivation to combine the teachings of the secondary references has been clearly laid out in the sections above.

Accordingly, applicant's claims are not considered to patentably distinguish over the prior art of record.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Japanese patent 10-253017 is cited to further show spiral shaped burner elements.


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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc
February 10, 2005


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749